

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ROY J. CAVILL,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 67845

**FILED**

NOV 19 2015

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of insurance fraud, theft, and conspiracy to commit theft. Fifth Judicial District Court, Nye County; Kimberly A. Wanker, Judge.

Appellant Roy Cavill claims the district court abused its discretion by giving the jury a flight instruction over his objection. Cavill asserts that, despite the information given in jury instruction 22, there was not enough evidence presented for a jury to infer consciousness of guilt.

We review the district court's decision regarding the issuance of a jury instruction for an abuse of discretion. *Ouanbengboune v. State*, 125 Nev. 763, 774, 220 P.3d 1122, 1129 (2009). "[A] district court may properly give a flight instruction if the State presents evidence of flight and the record supports the conclusion that the defendant fled with consciousness of guilt and to evade arrest." *Rosky v. State*, 121 Nev. 184, 199, 111 P.3d 690, 699-700 (2005). "Flight instructions are valid only if there is evidence sufficient to support a chain of unbroken inferences from the defendant's behavior to the defendant's guilt of the crime charged." *Jackson v. State*, 117 Nev. 116, 121, 17 P.3d 998, 1001 (2001). "Because of the possibility of undue influence by [a flight] instruction, this court


carefully scrutinizes the record to determine if the evidence actually warranted the instruction." *Weber v. State*, 121 Nev. 554, 582, 119 P.3d 107, 126 (2005).

Jury instruction 22 was the only evidence presented to support an inference of flight. That instruction informed the jury that the court, through judicial notice, had accepted as proven: a jury trial was originally scheduled to commence on April 15, 2014; Cavill was advised in open court on February 22, 2013, that the trial was scheduled to commence on April 15, 2014; and law enforcement's efforts to locate Cavill on April 15, 2014, were unsuccessful. Instruction 22 further informed the jury they could accept these facts as true, but they were not required to do so.

We agree with Cavill and conclude there was insufficient evidence to support an inference that Cavill did not appear at his first trial due to a consciousness of guilt. Therefore, we conclude the district court abused its discretion by overruling Cavill's objection and giving the flight instruction. Nevertheless, we conclude the error was harmless because we do not discern from the record either "a miscarriage of justice [or] prejudice to [Cavill's] substantial rights, and it is apparent that the same result would have been reached without the error." *Potter v. State*, 96 Nev. 875, 876, 619 P.2d 1222, 1223 (1980) (citation omitted); *see also* NRS 178.598. Accordingly, we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Silver

cc: Hon. Kimberly A. Wanker, District Judge  
David H. Neely, III  
Attorney General/Carson City  
Nye County District Attorney  
Attorney General/Las Vegas  
Nye County Clerk